IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
W.P.No. 2490/2007

Sahadeo Bhiwaji Wasnik vs. Municipal Council Umred, Tah. Umred and others.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

CORAM : A.P. Lavande,J
DATE : 30.10.2007

Heard Mr. Marpakwar, the learned counsel for the petitioner.

2. The petitioner takes exception to the order dated 22.6.2006 passed by the Industrial Court at Nagpur dismissing the complaint filed by the petitioner under Section 28 of the MRTU & PULP Act, 1971. The petitioner filed the complaint challenging promotion of respondent no. 3 to the post of Octroi Checker. According to the petitioner, he was senior to respondent no.3 and, therefore, he ought to have been promoted in preference to respondent no.3. The Industrial Court recorded a finding that there were several lapses committed by the petitioner and penalty was imposed on him for the said lapses. The Industrial Court after recording the finding that the orders imposing the punishment were never challenged by the petitioner held that the action of the Management in promoting respondent

no.3 based on merit and seniority could not be faulted and consequently dismissed the complaint filed by the petitioner.

3. Mr. Marpakwar, the learned counsel appearing for the petitioner submitted that the petitioner had filed an affidavit before the Industrial Court stating therein that the petitioner/complainant had challenged the orders passed by the Management imposing punishment and, therefore, the finding recorded by the Industrial Court is perverse. According to Mr. Marpakwar there were also complaints against the respondent no.3 and, therefore, the Industrial Court ought to have allowed the complaint filed by the petitioner.

4. Having considered the submissions made by the learned counsel for the petitioner and having perused the records I find no merit in the present petition. The Industrial Court has recorded a finding that the respondent no.1 was justified in promoting respondent no.3 on the basis of the merit and seniority and the seniority was not the only criteria for promotion. This finding of the Industrial Court cannot be faulted. In so far as the submission of Mr. Marpakwar that the Tribunal did not take into consideration the statement made by him in the affidavit that he had challenged the orders imposing punishment on him is

concerned same does not advance the case of the petitioner. Even if the petitioner had challenged those orders till final decision was taken therein the respondent no.1 was justified in taking into consideration the seniority as well as merit on the date of consideration of the respective claims of the petitioner and respondent no.3. This being the position even if the argument of Mr. Marpakwar is accepted the same does not advance the case of the petitioner any further. In so far as the submission made by Mr. Marpakwar that there were also complaint against the respondent no.3 is concerned, it was for the respondent no. 1 to take decision on the basis of the seniority and relative merit of the petitioner and respondent no.3. The respondent no.1 having considered the merit and seniority the action of the respondent no.1 in promoting respondent no.3 cannot be faulted.

5. For the reasons aforesaid, I find no merit in the present petition. Hence, the same is summarily rejected.

Judge

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